



Reprinted
April 10, 2003

ENGROSSED HOUSE BILL No. 1082

DIGEST OF HB 1082 (Updated April 9, 2003 4:28 PM - DI 105)

Citations Affected: IC 35-48; noncode.

Synopsis: Provides that a person may be charged with an offense under the controlled substances act for certain acts involving a controlled substance analog. Makes the possession of certain chemical reagents or precursors with the intent to manufacture methamphetamine a Class D felony. Provides a defense to a charge of possession of a chemical reagent or precursor with intent to distribute for a physician, pharmacist, and certain other persons required to possess a reagent or precursor in the regular course of business. Prohibits the sale of chemical reagents or precursors to a methamphetamine or other controlled substance manufacturer. Requires a person convicted of certain methamphetamine offenses to provide restitution for the costs of environmental cleanup. Makes it a Class A misdemeanor for a person to take a person less than 18 years of age or an endangered adult into a place that is being used to unlawfully possess, manufacture, store, sell, or deliver drugs or controlled substances.

Effective: July 1, 2003.

**Weinzapfel, Chowning, Frenz,
Mahern**

(SENATE SPONSOR — BRAY)

January 7, 2003, read first time and referred to Committee on Courts and Criminal Code.
February 13, 2003, amended, reported — Do Pass.
February 18, 2003, read second time, ordered engrossed. Engrossed. Returned to second reading. Reread second time, amended, ordered engrossed.
February 19, 2003, re-engrossed.
February 20, 2003, read third time, passed. Yeas 96, nays 0.
SENATE ACTION
February 27, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.
March 27, 2003, amended, reported favorably — Do Pass.
March 31, 2003, read second time, ordered engrossed. Engrossed.
April 8, 2003, returned to second reading.
April 9, 2003, reread second time, amended, ordered engrossed.

EH 1082—LS 6234/DI 105+



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April 10, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1082

A BILL FOR AN ACT to amend the Indiana Code concerning
criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-48-1-9.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 9.3. (a) "Controlled substance analog" means a**
4 **substance:**

5 **(1) the chemical structure of which is substantially similar to**
6 **that of a controlled substance included in schedule I or II and**
7 **that has; or**

8 **(2) that a person represents or intends to have;**
9 **a narcotic, stimulant, depressant, or hallucinogenic effect on the**
10 **central nervous system substantially similar to or greater than the**
11 **narcotic, stimulant, depressant, or hallucinogenic effect on the**
12 **central nervous system of a controlled substance included in**
13 **schedule I or II.**

14 **(b) The definition set forth in subsection (a) does not include:**

15 **(1) a controlled substance;**

16 **(2) a substance for which there is an approved new drug**
17 **application;**

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(3) a substance for which an exemption is in effect for investigational use by a person under Section 505 of the federal Food, Drug and Cosmetic Act (chapter 675, 52 Stat. 1052 (21 U.S.C. 355)), to the extent that conduct with respect to the substance is permitted under the exemption; or
 (4) a substance to the extent not intended for human consumption before an exemption takes effect regarding the substance.

SECTION 2. IC 35-48-4-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. For purposes of this chapter, a "controlled substance analog" is considered to be a controlled substance in schedule I if the analog is in whole or in part intended for human consumption.**

SECTION 3. IC 35-48-4-4.6, AS AMENDED BY P.L.150-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.6. (a)** A person who knowingly or intentionally:

- (1) manufactures;
- (2) finances the manufacture of;
- (3) advertises;
- (4) distributes; or
- (5) possesses with intent to manufacture, finance the manufacture of, advertise, or distribute;

a substance described in section 4.5 of this chapter commits a Class C felony.

(b) A person who knowingly or intentionally possesses a substance described in section 4.5 of this chapter commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous conviction under this section.

(c) In any prosecution brought under this section it is not a defense that the person believed the substance actually was a controlled substance.

(d) This section does not apply to the following:

- (1) The manufacture, financing the manufacture of, processing, packaging, distribution, or sale of noncontrolled substances to licensed medical practitioners for use as placebos in professional practice or research.
- (2) Persons acting in the course and legitimate scope of their employment as law enforcement officers.
- (3) The retention of production samples of noncontrolled substances produced before September 1, 1986, where such samples are required by federal law.



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(e) In addition to any other penalty imposed for conviction of an offense under this section, a court shall order restitution pursuant to IC 35-50-5-3 to cover the costs of an environmental cleanup incurred by a law enforcement agency or other person as a result of the offense.

(f) The amount collected under subsection (e) shall be used to reimburse the law enforcement agency that assumed the costs associated with the environmental cleanup described in subsection (e).

SECTION 4. IC 35-48-4-13.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 13.3. A person who recklessly, knowingly, or intentionally takes a person less than eighteen (18) years of age or an endangered adult (as defined in IC 12-10-3-2) into a building, structure, vehicle, or other place that is being used by any person to:**

(1) unlawfully possess drugs or controlled substances; or

(2) unlawfully:

(A) manufacture;

(B) keep;

(C) offer for sale;

(D) sell;

(E) deliver; or

(F) finance the delivery of;

drugs or controlled substances;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

SECTION 5. IC 35-48-4-14.5, AS AMENDED BY P.L.17-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:**

(1) Ephedrine.

(2) Pseudoephedrine.

(3) Phenylpropanolamine.

(4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).

(5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).

(6) Organic solvents.

(7) Hydrochloric acid.

(8) Lithium metal.

(9) Sodium metal.

(10) Ether.



- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.

(b) A person who possesses **more than fifteen (15) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding fifteen (15) grams or** anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

- (1) a firearm while possessing **more than fifteen (15) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding fifteen (15) grams or** anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or
- (2) **more than fifteen (15) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding fifteen (15) grams or** anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:
 - (A) school property;
 - (B) a public park;
 - (C) a family housing complex; or
 - (D) a youth program center.

(c) Subsection (b) does not apply to a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities.



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(~~c~~) (d) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture:

(1) Methcathinone, a schedule I controlled substance under IC 35-48-2-4;

(2) ~~Methamphetamine~~, a schedule H controlled substance under ~~IC 35-48-2-6~~;

(~~3~~) (2) Amphetamine, a schedule II controlled substance under IC 35-48-2-6; or

(~~4~~) (3) Phentermine, a schedule IV controlled substance under IC 35-48-2-10;

commits a Class D felony.

(d) An offense under subsection (c) is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine; a schedule H controlled substance under IC 35-48-2-6; or

(2) two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine; a schedule H controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(e) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture methamphetamine, methcathinone, amphetamine, or phentermine commits unlawful sale of a precursor, a Class D felony.

SECTION 6. IC 35-48-4-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) In addition to any other penalty imposed for conviction of an offense under this chapter involving the manufacture or intent to manufacture methamphetamine, a court shall order restitution under IC 35-50-5-3 to cover the costs, if necessary, of an environmental cleanup incurred by a law enforcement agency or other person as a result of the offense.

(b) The amount collected under subsection (a) shall be used to reimburse the law enforcement agency that assumed the costs associated with the environmental cleanup described in subsection (a).



1 SECTION 7. [EFFECTIVE JULY 1, 2003] (a) IC 35-48-4-13.3, as
2 added by this act, and IC 35-48-4-14.5, as amended by this act,
3 apply only to acts committed after June 30, 2003.

4 (b) IC 35-48-1-9.3 and IC 35-48-4-0.5, both as added by this act,
5 apply only to a controlled substance offense under IC 35-48-4 that
6 occurs after June 30, 2003.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1082, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1082 as introduced.)

WEINZAPFEL, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1082 be returned to the second reading calendar forthwith for the purpose of amendment.

WEINZAPFEL

HOUSE MOTION

Mr. Speaker: I move that House Bill 1082 be amended to read as follows:

Page 2, line 6, after "**report.**" insert "**This section does not apply to acts or omissions amounting to gross negligence or wilful or wanton misconduct**".

(Reference is to HB 1082 as printed February 14, 2003.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1082, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 13.

Page 3, line 41, delete "or allows".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1082 as reprinted February 19, 2003.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1082 be amended to read as follows:

Page 4, line 9, after "possesses" insert **"more than fifteen (15) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding fifteen (15) grams or"**.

Page 4, line 9, reset in roman "anhydrous ammonia or ammonia".

Page 4, line 10, reset in roman "solution (as defined in IC 22-11-20-1)".

Page 4, line 10, delete "one (1) or more chemical".

Page 4, line 11, delete "reagents or precursors".

Page 4, line 15, after "possessing" insert **"more than fifteen (15) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding fifteen (15) grams or"**.

Page 4, line 15, reset in roman "anhydrous ammonia or ammonia".

Page 4, line 16, reset in roman "solution (as defined in IC 22-11-20-1)".

Page 4, line 16, delete "one (1) or more chemical".

Page 4, line 17, delete "reagents or precursors".

Page 4, line 20, after "(2)" insert **"more than fifteen (15) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding fifteen (15) grams or"**.

Page 4, line 20, reset in roman "anhydrous ammonia or ammonia solution (as defined in)".

Page 4, line 21, reset in roman "IC 22-11-20-1)".

Page 4, line 21, delete "one (1) or more chemical reagents or".

Page 4, line 22, delete "precursors".

Page 4, between lines 28 and 29, begin a new paragraph and insert:

"(c) Subsection (b) does not apply to a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities."

Page 4, line 29, strike "(c)" and insert "(d)".

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Page 5, line 11, delete "(d)" and insert "(e)".

(Reference is to EHB 1082 as printed March 28, 2003.)

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